Mahzan bin Abdullah & Anor v Lee Wing Hong & Anor (No 1)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-745–04 OF 2012
SULONG MATJERAIE FCJ, CLEMENT SKINNER AND APANDI ALI JJCA
28 SEPTEMBER 2012

Civil Procedure — Judge — Application to recuse judges — Whether there was real danger of bias

The respondents applied for this panel of judges of the Court of Appeal to recuse themselves from hearing the instant case. The application for the judges' recusal was made after the appellants had completed their submission, without the respondents assigning any reason for the application. The appellants alleged that it was the respondents who had suggested that the instant case ought to be heard before the present panel because they were the original panel that had heard the initial appeal that arose in the instant case.

Held, dismissing the application for recusal:
On the facts there was no real likelihood of danger, in the sense of a real possibility of bias on the part of the present panel. Further, the respondent had failed to suggest that there was a real danger of bias on the part of this panel (see paras 8–9).

[Bahasa Malaysia summary

Responden-responden memohon untuk panel hakim-hakim Mahkamah Rayuan untuk menarik diri mereka daripada mendengar perbicaraan kes ini. Permohonan untuk penarikan diri hakim-hakim dibuat selepas perayu-perayu telah menyelesaikan penghujahan mereka, tanpa responden-responden memberikan apa-apa sebab untuk permohonan tersebut. Perayu-perayu mendakwa bahawa responden-responden yang mencadangkan kes ini patut didengar di hadapan panel ini kerana mereka adalah panel asal yang mendengar rayuan pemula yang berbangkit daripada kes ini.

Diputuskan, menolak permohonan untuk penarikan diri:
Atas fakta tidak terdapat kemungkinan sebenar bahaya, dalam erti kata kemungkinan sebenar berat sebelah oleh pihak panel ini. Selanjutnya, responden gagal untuk mencadangkan bahawa terdapat bahaya sebenar berat sebelah oleh pihak panel ini (lihat perenggan 8–9).]

Notes

For cases on application to recuse judge, see 2(2) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 4399–4410.

Cases referred to

Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara [2002] 1 MLJ 321; [2001] 4 CLJ 701, FC (folld)

R v Gough [1993] AC 646, HL (folld)

Harpal Singh Grewal (Harwinder Kaur with him) (AJ Ariffin, Yeo & Harpal) for the appellants.

Manjit Singh Saini (David Hu with him) (Harun Idris Yeoh & Partners) for the respondents.

Sulong Matjeraie FCJ:

DECISION ON APPLICATION BY THE RESPONDENT ON THE RECUSAL OF THIS PANEL

[1] In the course of replying to the argument of learned counsel for the appellant, before this panel of Court of Appeal judges on 10 August 2012, learned counsel for the respondent 'stumbled upon' an argument that this panel of Court of Appeal judges consisting of Justice Clement Allan Skinner, Justice Mohamed Apandi Ali and Justice Sulong Matjeraie, should recuse ourselves from hearing the instant case. We were informed by Dato' Harpal Singh Grewal of counsel for the appellant that no notice was served on him on the intention of learned counsel for the respondent to apply for our recusal.

[2] Learned counsel for the respondent argued that we should recuse ourselves without assigning any reason. Furthermore this was done after learned counsel for the appellant had completed his submission.

[3] In his reply to the contention that this panel should recuse itself, it was suggested by learned counsel for the appellant that it was learned counsel for the respondent himself, who had requested from the earlier panel assigned to hear this case and chaired by Justice Abdul Wahab Patail JCA to revert this case back to the original panel. It was further submitted that in view of the insistence of Mr Manjit Singh Saini that Justice Abdul Wahab Patail allowed his request.

A **[4]** At the hearing on 10 August 2012 parties agreed that we should check the record of proceedings from the earlier panel comprising of Justice Abdul Wahab Patail JCA, Justice Clement Allan Skinner, JCA and Justice Aziah Ali, JCA on the authenticity and accuracy of this claim. Accordingly, acting on the suggestion we have gone through the record of proceedings chaired by Justice B Abdul Wahab Patail. We found that this is true as it was learned counsel for the respondent who suggested that this matter should be reverted to this panel.

[5] In a situation when an issue is raised as to whether a panel of the Court of Appeal judges should have recused themselves from hearing a case on the basis C of a perception of bias on our part, the test to be applied is 'the real danger of bias' test as enunciated by the House of Lords in *R v Gough* [1993] AC 646. This case was followed and applied by our Federal Court in the case of *Mohamed Ezam bin Mohd Nor & Ors v Ketua Polis Negara* [2002] 1 MLJ 321; [2001] 4 CLJ 701. As such, we are bound by the said decision.

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[6] However in this case, learned counsel for the respondent failed to argue as to the reason why we should recuse ourselves, least of all argued that there was a 'real danger of bias'.

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[7] The question here was whether, having regard to the facts and circumstances of the case was there a real danger of bias on the part of this panel of the Court of Appeal judges when we heard the application by the appellants?

F **[8]** On the facts there was no real likelihood of danger, in the sense of a real possibility of bias on our part. Further, there was nothing in the submission of learned counsel for the respondent to suggest that there was a real danger of bias on the part of this panel.

G **[9]** Based on the above, we unanimously dismiss the application for recusal. We will now proceed to hear the continuation of submission of learned counsel for the respondent in response to the earlier submission of learned counsel for the appellant.

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Application for recusal dismissed.

Reported by Kohila Nesan